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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Meetings: WT Docket No. 08-7

Dear Ms. Dortch:

On August 10, 2016, Twilio Inc. ("Twilio") conducted two ex parte meetings.

Twilio first met with Edward "Smitty" Smith, legal advisor to Chairman Wheeler. Twilio then met with Daudeline Meme, legal advisor to Commissioner Clyburn. Doug Gardner and I attended the meetings on behalf of Twilio. Michael Hazzard of Jones Day attended as Twilio's counsel.

Twilio urged the Commission to grant Twilio's petition, WT Docket No. 08-7 in order to prevent wireless carriers from blocking and filtering of lawful, TCPA compliant text messages.

Twilio discussed the declaratory ruling released last week by the FCC (CG Docket No. 02-278) in which the Commission confirmed that educational institutions and utilities may send a variety of text messages, informational as well as emergency, to their constituents. The Commission rightly recognized that students, parents, guardians and others want to communicate with teachers and others at schools using text messages and that consumers similarly want to communicate with their utilities via text message about service, billing, and other matters. The Commission -- and individuals -- expect these messages to go through, just like voice calls.

The wireless carriers, by contrast, take the view that they can block any text message at any time for any reason. A mountain of record evidence from comments in WT Docket No. 08-7 demonstrates unilateral carrier blocking of all kinds of lawful, desired text messages, including thousands from schools to students, parents and guardians.

This unilateral blocking continues to frustrate consumers, undermine the ubiquity and seamlessness of the PSTN, and violate Commission orders, including the Commission's most recent declaratory ruling on education and utility text messages.

Please let me know if you have any questions or need additional information.

Sincerely,

Emily Denadel Emery
Government Relations Manager
Twilio Inc.

Attached: Ex Parte Presentation shared with Ms. Meme

INTRODUCTION

I.   ABOUT TWILIO

II.   BACKGROUND ON PETITION AND PREVALENCE OF TEXT MESSAGING

III. MESSAGE BLOCKING HARMS CONSUMERS

IV.   NO FACTS IN DISPUTE: CARRIERS BLOCK WITHOUT REGARD TO CONSENT

V.   CONSUMER CONSENT SHOULD BE GUIDING PRINCIPLE (TCPA, PUBLIC SAFETY)

VI.   THE COMMISSION MUST ACT

Twilio takes a revolutionary approach to telecommunications.

"We take care of the messy telecom hardware and expose a globally available cloud API that developers can interact with to build intelligent and complex communications systems. As your app's usage scales up or down, Twilio automatically scales with you. You only pay for what you use - no contracts, no shenanigans."

-- Twilio provides voice, messaging, video and authentication APIs globally

-- Over 1 million developers have built applications on Twilio

-- OTP / Authentication / Two-Factor Authorization; Internet of Things

TWILIO COMMUNICATIONS PLATFORM

Business Applications

VOICE

MESSAGING

VIDEO

CONNECTIVITY

AUTHENTICATION

BEFORE

CALL   **MESSAGE**   **VIDEO**

communications are a
standalone experience

NOW

CUSTOM SOFTWARE

VERTICAL APPS   MOBILE APPS

ENTERPRISE SOFTWARE

communications are an
integrated experience

RIDE SHARE SERVICES INSTANTLY CONNECT DRIVERS WITH RIDERS USING TWILIO

BEFORE

- call & wait on hold to order
- call & wait again to find ETA
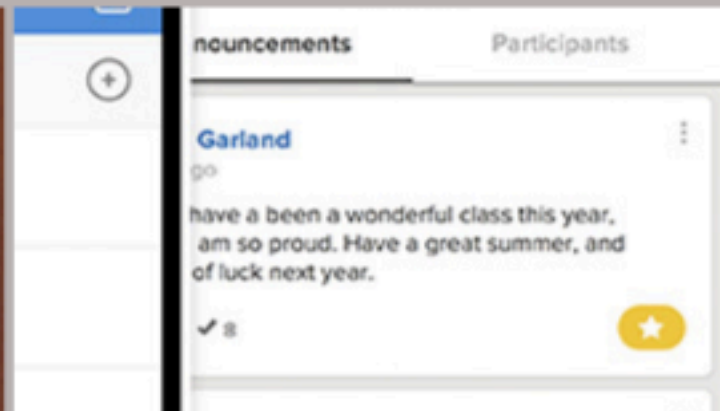- call & wait again to change order

NOW

- instant order & confirmation
- instant ETA alert
- instant connection with driver

REMIND CONNECTS TEACHERS WITH PARENTS AND STUDENTS USING TWILIO

Garland

have a been a wonderful class this year,
am so proud. Have a great summer, and
of luck next year.

BEFORE

- calls and phone trees
- paper handouts
- one-way outreach

NOW

- instantaneous and accessible
- media rich embeds
- two-way interaction

CONTEXTUAL CUSTOMER SERVICE

WORK FLOW OPERATIONS
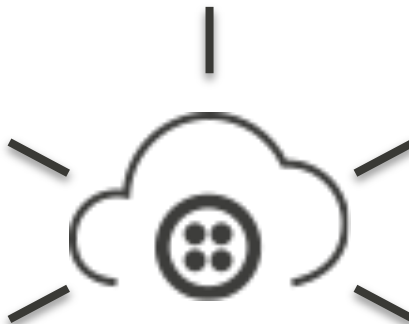
REAL-TIME MARKETING

CUSTOMER SECURITY

CONTEXTUAL COMMUNICATIONS

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COMMISSION ACTION NEEDED

-- Text messaging is the most ubiquitous form of communication today

-- Messaging is a well-established part of the Public Switched Telephone Network ("PSTN")

-- Consumers and businesses expect their messages to be carried without disruption, just like any other call

-- Carriers block millions of text messages each month without regard to consumers' consent or desire

-- Clarifying messaging as Title II Communications protects and fosters innovation

-- The legacy, carrier-controlled system has become disruptive to the ubiquity and seamlessness of the PSTN

WORSENING MOBILE OPERATOR BEHAVIOR

Conventions ignored:

-- Blocking is prevalent

-- NANP numbering conventions ignored

-- Conventional routing instructions ignored

-- Interconnection rejected

-- Artificial classifications P2P, A2P, Enterprise, etc. are code for fast lanes and paid prioritization

As a result:

-- Innovation is stifled

-- Consumers and businesses are harmed

-- The evolution of the PSTN is artificially constrained

Messaging is the only form of telecommunications where the Commission permits these disruptions to persist.

BLOCKING OF CONSENTED MESSAGES

Carriers routinely block lawful, consented, TCPA-compliant text messages from/to valid NANP numbers
-- Precludes consumers from receiving the "unlimited" messaging they are promised
-- Consumers, application providers, and others not informed of blocking
-- Carrier blocking opaque
-- Harms the ubiquity and seamlessness of the PSTN, as well as innovative business

This docket WT 08-7 documents the ongoing blocking of consented messages:
-- Emergency health care messages see *ClearCare*
-- Teacher / Parent / Student communications see *Remind*
-- Real-estate listing showing instructions see *ShowingTime and Zillow*
-- Application authentication codes *see Foursquare*
-- Law enforcement see *NexGen*

COMMISSION PRECEDENT

It is uncontroversial that:

-- Messages are "calls" under the TCPA, Title II

-- Messages are telecommunications services

-- Messages are CMRS

Accordingly, numbering, non-blocking, interconnection, and reasonable rate provisions must apply.

Precedent supports an immediate interim ruling reaffirming the prohibition against call blocking.

The WCB has issued at least two such declarations *on its own motion* in Dockets 01-92 and 07-135 (27 FCC Rcd. 1351 (2012) and 22 FCC Rcd. 11629 (2007))

-- Traffic should flow unfettered while the Commission works to address the issues in this docket

-- Consumer protections apply to all calls

March 2014 Configuration NANP Message Routing

-- All NANP numbers routed equally, including toll free range

-- Twilio and other participants connect and treated equal to carrier

-- All participants enjoy right to choose ICV provider of choice

-- Consented messages flow unharmed

-- Capital markets operate freely to set commercial terms

-- Seamless and ubiquitous NANP message communications
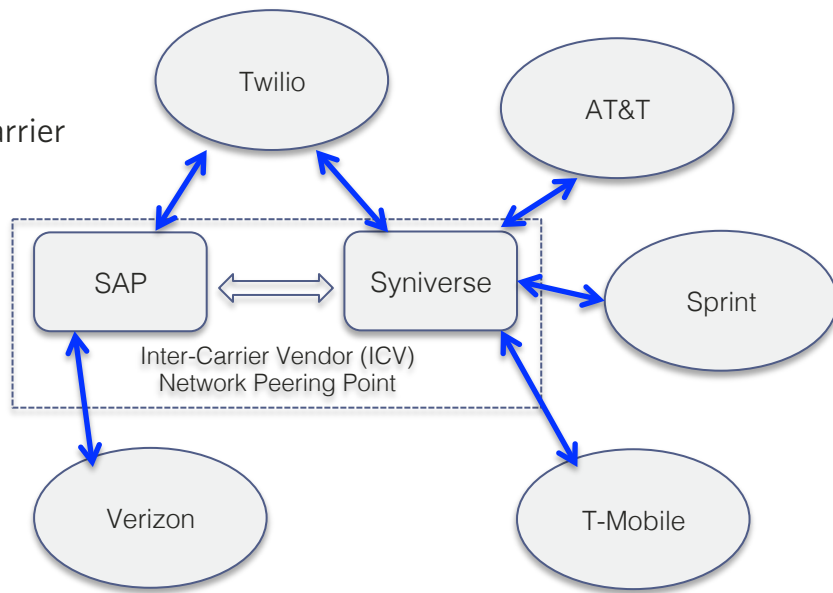
Post - March 2014 NANP Message Routing

-- Carriers assert unilateral authority over messaging and begin disrupting consented messages and use cases

-- Verizon, AT&T, T-Mobile, USCC block toll free number range and reroute to single toll free aggregator;

force Twilio and others into commercial agreements to restore routing

-- Sprint applies new fee specifically and only to all non CMRS operators

-- Carrier bypass lanes for all CMRS originated messages means carriers' messages treated differently regardless of consumer consent
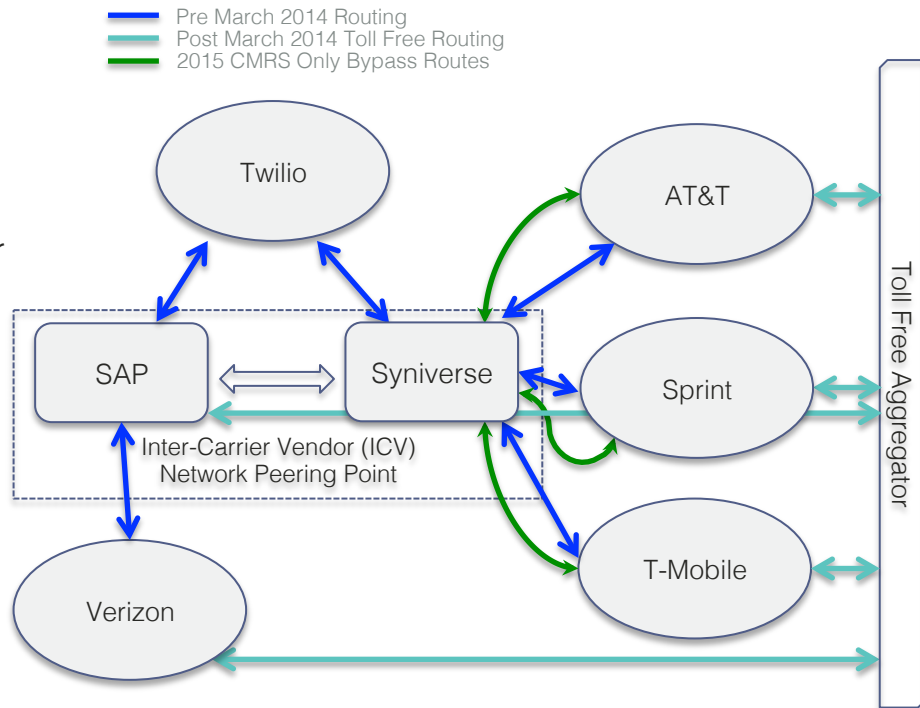
MILLIONS OF CONSENTED MESSAGES FILTERED EACH MONTH -- WITHOUT NOTICE

2016	Messages Filtered
January	6.2 million
February	13.0 million
March	11.6 million
April	6.5 million
May	5.5 million
June	4.1 million
July	6.2 million

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High Volume of Filtering

-- Over 100 million consented messages have been blocked since Twilio filed petition in August 2015.

-- "Operational error?"

Wide Ranging Impact

-- Between 1,500 and 3,500 Twilio customers' messages blocked each month.

Disproportionate Distribution

In July 2016…

-- 4 Twilio customers had more than 250,000 messages blocked…

-- 12 Twilio customers had at least 100,000 messages blocked…

-- 19 Twilio customers had at least 50,000 messages blocked…

-- 69 Twilio customers had at least 10,000 messages blocked.

BLOCKING IS DIRECTLY LIMITING THE EVOLUTION AND GROWTH OF THE MOBILE ECONOMY

The record in this docket demonstrates serious and ongoing harm to consumers due to carrier blocking of consented messages:

Emergency services, see Trek Medics International:
"Arbitrary blocking of our messages means that sometimes paramedics will find out when somebody is dying, and sometimes they won't…."

Health Care messages, see ClearCare:
"[A] caregiver may miss their shift, which could mean that the senior citizen could miss critical care that they need."

Teacher / Parent / Student communications, see Remind:
"… contextually filtering messages, applying arbitrary rules on traffic balance, volumetric filtering, and blacklisting telephone numbers are causing irreparable harm to teachers and students…more than 150,000 teacher/student interactions per day are being disrupted."

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The record in this docket demonstrates serious and ongoing harm to consumers due to carrier blocking of consented messages:

Emergency services, see NexGen:
Delayed short code application means they paid the wireless carriers' trade group tens of thousands of dollars for the "privilege" of seeking to introduce a new service – here a NG911 application – that could literally save lives.

Advocacy and non-profit, see Polaris:
"Arbitrary message filtering on public service applications such as ours can have profound negative impacts on the individual and on our communities."

Application authentication codes, see Foursquare:
"There are periods where Foursquare has seen 100% of the messages being blocked by certain carriers."

Carrier blocking and the broken CTIA system limits innovation and economic growth daily

Cybersecurity – the US is falling behind
- -- SMS-based password authentication among the best methods to prevent hacking
- -- Authentication messages routinely blocked by carriers

Internet of Things – the US is falling behind
- -- SMS-based communication is fundamental to interconnected devices
- -- Consumer-to-device messages routinely blocked by carriers

Chatbots – the US is falling behind
- -- SMS-based communication fundamental to market development
- -- Widely recognized as the next generation of applications
- -- Cannot work on an interconnected basis today

Commissioner Clyburn on Open Internet Order

"This is more than a theoretical exercise. Providers here in the United States have, in fact, blocked applications on mobile devices, which not only <u>hampers free expression</u> but also <u>restricts competition and innovation</u> by allowing companies, not the consumer, to pick winners and losers."

"The consumer … not me, not the government and not the industry, but you, <u>the consumer, makes these decisions."</u>

"We are here to ensure that every American has the ability to communicate by <u>their preferred means over their chosen platform.</u>…"

"The item contains <u>strong, clear rules</u> to ensure that all content, all applications and all bits are treated equally. These are all essential to the free market and this is <u>pro-competitive.</u>"

CONSENTED, TCPA COMPLIANT MESSAGES ARE BEING BLOCKED

-- Carriers acting unilaterally and without consumer consent to read/block messages

-- Ongoing disruption to public safety, emergency, classroom, customer service, employer/employee messages

Carrier NANP blocking practices discriminate in favor of the CTIA Common Short Code system and their competing services

-- Messages blocked on NANP numbers flow through on CSCs

-- CSC system materially more expensive, less functionality than NANP messaging

-- Carriers offer their own NANP-based texting services that are not subject to gatekeeper blocking and discriminatory treatment

Commissioner Rosenworcel on Open Internet Order

"We cannot have a <u>two-tiered</u> Internet with <u>fast lanes</u> that speed the traffic of the privileged and leave the rest of us lagging behind. We cannot have <u>gatekeepers</u> who tell us what we can and cannot do and where we can and cannot go online. And we do not need <u>blocking, throttling,</u> and <u>paid prioritization</u> schemes that undermine the Internet as we know it."

TCPA REGULATIONS DEFINE CONSENTED TEXT MESSAGES

The Commission's TCPA framework empowers consumers to:

-- Provide and revoke consent (e.g., "STOP")

-- Pursue class action litigation, a major deterrent and behavior modifier

-- Adopt and implement technology for consumer-initiated blocking/filtering

The Commission's TCPA regulations set forth a well-defined and accepted framework for classifying voice and text calls as unsolicited, "spam" calls.

The consumer's perspective is key; as Chairman Wheeler recently noted regarding this proceeding, the task is:
"*ensuring that **consumers** receive the text messages **they** want while protecting **consumers** from **unwanted** messages*" (emphasis added)

CARRIERS AND OTHERS CAN REASONABLY MANAGE THEIR NETWORKS

The Commission has repeatedly emphasized that carriers can take action to reasonably manage their networks

Bringing messaging affirmatively under the Commission's well-understood Title II framework would promote positive network management practices and protect consumers:

-- Cooperation and coordination among all providers

-- Enable the ability to suspend and investigate sources of unsolicited messaging

-- Prohibit blocking of messages that consumers want to send and receive

-- Protect consumers and enable the networks and industry to evolve in a healthy way

-- Protect networks and emphasize ubiquity and seamlessness of national communications infrastructure

CARRIERS AND OTHERS CAN REASONABLY MANAGE THEIR NETWORKS

Best Practices

-- Account level suspension by behavioral, financial indicators, not volumetric

-- Message rule based heuristics, fingerprints and machine learning

-- Opt-out monitoring

-- Instantaneous intervention and response with 24/7 NOC, route analysts and fraud services team

Chairman Wheeler on Open Internet Order

"We know from the history of previous networks that both human nature and economic opportunism act to encourage network owners to become <u>gatekeepers</u> that prioritize their interests above the interests of their users."

"These <u>enforceable, bright-line rules</u> assure the rights of Internet users to go where they want, when they want, and the <u>rights of innovators</u> to introduce new products without asking anyone's permission."

"The Order also includes a general conduct rule that can be used to stop new and novel threats to the Internet. That means there will be <u>basic ground rules and a referee on the field to enforce them</u>. If an action hurts consumers, competition, or innovation, the FCC will have the authority to throw the flag."

"Today's Order also asserts <u>jurisdiction over interconnection.</u> The core principle is the Internet must remain open. We will protect this on the last mile and at the point of interconnection."

SMS messaging is the most prevalent form of communication/calling today; it should be brought affirmatively into the Commission's regulatory framework.

-- SMS messages utilize NANP numbers, the key hallmark of the PSTN.

-- The Commission has found that SMS messages are "calls" under the TCPA, Section 227 of the Communications Act.

-- Section 227 of the Act is codified under Title II; the D.C. Circuit has made clear that if a service is Title II for one purpose, it's Title II for all purposes.

-- The Commission has ample authority to "forbear" from any Title II provisions that do not need to apply to SMS messaging.